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SENATE

REPORT
99-477

DISTRICT OF COLUMBIA JUDICIAL EFFICIENCY AND IMPROVEMENT ACT OF 1986

SEPTEMBER 23 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

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Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany H.R. 3578]

[Including cost estimate of the Congressional Budget Office]

The Committee on Governmental Affairs, to which was referred the bill (H.R. 3578) to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The Committee on Governmental Affairs, to whom was referred the bill (H.R. 3578) to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF THE LEGISLATION

It is the purpose of H.R. 3578, the District of Columbia Judicial Efficiency and Improvement Act, to make numerous amendments to the provisions of the District of Columbia Code dealing with the administration of the local court system, including permanently authorizing the use of hearing commissioners.

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Background of the Legislation

The District of Columbia court system was established in 1970 by the District of Columbia Court Reform and Criminal Procedure Act, which was reaffirmed when the Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (commonly known as the Home Rule Act).

Several years into the operation of the new court system, the District of Columbia Bar appointed the District of Columbia Court Study Committee which was charged with assessing the effect of the Court Reform Act and making "such recommendations as were warranted for further improvement in the court system of the District of Columbia." The Committee, chaired by Charles A. Horsky, became known as the Horsky Committee. In April of 1983, the results of the Horsky Committee's work was published in a volume by the Senate Governmental Affairs Committee. In it, nine reports detail the findings of the Horsky Committee on nine specific areas of the court system, and make numerous recommendations to further the administration of justice within the District of Columbia.

Following the report of the Horsky Committee, the D.C. Bar appointed another committee chaired by John H. Pickering, with the Horsky Committee report. The Pickering Committee gathered an informal group of representatives of the local judiciary and court administration, the D.C. executive and legislative branches, the U.S. Attorney, and relevant Congressional committees to put together a proposal to implement many of the most noncontroversial recommendations of the Horsky Committee that require legislative action by the Congress. H.R. 3578 represents that work.

In addition, H.R. 3578 contains provisions which permanently authorize the use of hearing commissioners in the District of Columbia Court system. In 1982, a pilot program of hearing commissioners was authorized by the supplemental appropriations bill for fiscal year 1982. The program was an attempt by the Congress to give the D.C. Superior Court the tools with which to better address an overburdened court system. The program allows judges to be free to conduct trials, while hearing commissioners perform many ministerial functions of the court including administering oaths and affirmations, determining release and pretrial detention conditions and conducting preliminary examinations to determine probable cause and similar duties. H.R. 3578 establishes the procedures for the selection and appointment, discipline and removal of hearing commissioners. In addition, it delineates the duties hearing commissioners may perform. Finally, the bill requires a study of the hearing commissioner program be conducted by the Superior Court in consultation with the D.C. Bar and other interested parties, and that a report be made to the "appropriate committees of the Congress."

This legislation is particularly important because it provides for the permanent authority for hearing commissioners to hear cases regarding the establishment or enforcement of child support. As a result of the Child Support Enforcement Amendment of 1984 (P.L. 98–378), states (and the District of Columbia) are required to establish an expedited process for dealing with child support orders. In order for the District of Columbia to meet the requirements of the

Child Support Enforcement Amendments, the authority of hearing commissioners in these cases must be expanded. H.R. 3578 meets those requirements with respect to the authority of hearing commissioners to establish or enforce child support orders.

History of the Legislation

H.R. 3578 was introduced by Representative Mervyn Dymally and referred to the House District of Columbia Committee on October 17, 1985, following a subcommittee hearing and consideration of a predecessor bill, H.R. 3370. It was considered and passed by the House of Representatives on October 28, 1985, and referred to the Senate Govenmental Affairs Committee the following day.

The bill was then referred to the Subcommittee on Governmental Efficiency and the District of Columbia which held a hearing on March 5, 1986. At that hearing testimony was taken from a number of witnesses, including the chief judges of both of the local courts, representatives of the executive branch of the the D.C. government, the D.C. Bar, and other interested parties. Many recommendations were made by athe various witnesses for improvements in the proposal.

Following the subcommittee hearing on the legislation, an amendment in the nature of a substitute was drafted, taking into consideration recommendations made by the witnesses at the hearing and others. The amendment was adopted by the Subcommittee and the bill was unanimously approved for referral to the full Governmental Affairs Committee on June 24, 1986. The Governmental Affairs Committee considered the bill and ordered it favorably reported with the amendment in the nature of a substitute at its June 25, 1986 business meeting.

Section-by-Section Analysis

SECTION 1

Short title

Provides the short title of the bill: "District of Columbia Judicial Efficiency and Improvement Act of 1986."

SECTION 2

Hearing commissioners

Amends Section 1732 of Title 11 of the D.C. Code to permanently authorize hearing commissioners and establishes guidelines for the appointment, removal and duties of commissioners.

Subsection (a) provides for the appointment of hearing commissioners by the Chief Judge of the Superior Court subject to the approval of a majority of the judges of the Court.

Subsection (b) provides that commissioners shall be selected pursuant to procedures adopted by the Court, including the establishment of an advisory merit selection panel to assist the Board of Judges to identify candidates for the positions.

Subsection (c) establishes certain qualifications which hearing commissioners must meet.

Subsection (d) establishes the term for hearing commissioners as four years, and provides for an automatic four year term for those commissioners in office at the time the bill becomes law.

Subsection (e) provides for a hearing commissioner to sit for up to 90 days following the expiration of his term or until his successor is appointed.

Subsection (f) provides a mandatory retirement age for hearing commissioners of 74 years of age.

Subsection (g) establishes the standards for discipline of a hearing commissioner by the Board of Judges. In addition, the subsection provides the opportunity for a hearing commissioner to be heard in any disciplinary proceeding.

Subsection (h) provides, when appropriate, for the termination of a hearing commissioner position by the Board of Judges.

Subsection (i) restricts the ability of a commissioner to engage in any other business practice during his tenure and requires commissioners to abide by the Canons of Judicial Ethics.

Subsection (j) delineates the functions which a hearing commissioner may perform, when specifically designated by the chief judge of the Superior Court. This section eliminates current provisions of law which require the consent of the parties for hearing commissioners to determine conditions of release and pretrial detention, and to conduct preliminary examinations in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it. In addition, this section delineates the authority of hearing commissioners to hear cases establishing or enforcing child support, pursuant to the requirement of Public Law 98-378, and subsequent regulations of the Department of Health and Human Services. Finally, this section provides for certain findings made by hearing commissioners to be final and for a hearing commissioner to make final orders and judgments in those situations. These provisions are intended to answer concerns raised by the D.C. Court of Appeals in *Kwakye* v. *District of Columbia*, 494 A.2d 643 (D.C. 1983).

Subsection (k) provides that a commissioner's order or judgment, which may be final as provided in subsection (j), may be reviewed by a judge of the Superior Court sua sponte and must be reviewed upon motion of a party to the proceeding. An appeal may be made to the Court of Appeals only after a judge has reviewed the order or judgment (or in his discretion, has reheard the case), or if no review is made, when the time for filing objections runs.

Subsection (l) provides that the Superior Court train hearing commissioners.

Subsection (m) provides that the chief judge of the Superior Court, in consultation with the D.C. Bar and other interested parties make a study of the use of hearing commissioners in the Superior Court and report its findings and recommendations to the appropriate Congressional committees (including the House District Committee and the Senate Subcommittee on Governmental Efficiency and the District of Columbia) within one year of the effective date of this section. It is the intent of the Committee that the chief judge and the D.C. Bar shall emphasize actual practice before the Superior Court and before hearing commissioners in selecting those persons who will be involved in this study.

Subsection (n) provides for the promulgation of rules to implement this section.

Subsection (o) defines the term "Board of Judges" as the judges authorized by D.C. Code section 11-903 and requires any action by the Board of Judges with respect to the provisions of Section 2 of H.R. 3578 to be made by a majority vote of the judges of the Superior Court, not including any vacancies.

SECTION 3

Appointment of executive officer of the District of Columbia courts

Amends Title 11, section 1703 of the D.C. Code by eliminating the requirement that the Executive Officer of the District of Columbia Courts be appointed from a list of candidates submitted by the director of the Administrative Office of the United States Courts, allowing the Joint Committee on Judicial Administration to make the selection itself. This section also requires future executive officers of the D.C. Courts to be (or within 90 days of appointment to become) a resident of the District of Columbia and specifically exempts the current executive officer.

SECTION 4

Mandatory retirement age of judges

Provides a technical amendment to the Home Rule Act to make it consistent with earlier federal law which changed the mandatory retirement age of judges to 74.

SECTION 5

Reorganization of audit responsibilities

Amends Section 11-1724 of the D.C. Code to eliminate the requirement that the Auditor-Master audit and state fiduciary accounts and authorizes the Register of Wills to perform that function.

SECTION 6

Elimination of duplicate judicial financial reporting requirement

Amends section 303 of the Ethics in Government Act of 1978 to eliminate the requirement that D.C. judges file financial disclosure reports with the Judicial Ethics Committee of the Judicial Conference of the United States, inasmuch as these judges are already required to file financial disclosure reports with the D.C. Judicial disabilities and Tenure Commission.

SECTION 7

Certification of questions of law

Would permit the United States Courts of Appeals, the Supreme Court of the United States and the highest court of any state to certify questions of District of Columbia law to the District of Columbia Court of Appeals, which would have the discretion to act. This section conforms the District law with the Uniform Certification of Questions of Law Act, 12 U.L.A. 52 (1975).

SECTION 8

Public access to materials of judicial nomination commission

Amends Section 434(c)(3) of the Home Rule Act to exempt materials relevant to the judicial nomination consideration process from the Federal Freedom of Information Act.

SECTION 9

Meetings of the Judicial Nomination Commission

Amends Section 434(c) of the Home Rule Act to allow the Judicial Nomination Commission to hold closed meetings.

SECTION 10

Public announcement of judicial recommendations

Amends Section 434(d) of the Home Rule Act to require the Judicial Nomination Commission to publicly announce its judicial recommendations when they are submitted to the President.

SECTION 11

Disclosure of certain information to the Judicial Nomination Commission

Amends section 11-1528 of the D.C. Code to authorize the District of Columbia Judicial Disability and Tenure Commission to disclose to the District of Columbia Nomination Commission information relating to the nomination of any judicial candidate for the District of Columbia Court of Appeals or any candidate for the chief judgeship of either of the D.C. courts.

SECTION 12

Reappointment to judicial office

Amends Section 433(c) of the Home Rule Act to require judges seeking reappointment to so state at least six months prior to the expiration of their current term. In addition, this section would require the Commission on Judicial Tenure and Disabilities to prepare and submit a written evaluation of the declaring judge to the President not less than 60 days prior to the expiration of the current term.

SECTION 13

Modification of judicial reappointment evaluation categories

Amend Section 433(c) of the Home Rule Act to eliminate the judicial reappointment evaluation category of "exceptionally well qualfied."

SECTION 14

Service of retired judges

Amends Title 11, section 1504(a) to allow a retired judge of the D.C. Superior Court or Court of Appeals to request a recommendation for appointment as a senior judge from the Judicial Tenure

and Disabilities Commission any time prior to retirement or up to one year after retirement.

SECTION 15

Extension of period for submitting judicial nominations

Amends Section 434(d)(1) of the Home Rule Act to authorize the Judicial Nomination Commission to have sixty days to certify a list of three candidates to the President upon notification of a judicial vacancy on the Superior Court or Court of Appeals.

SECTION 16

Judicial compensation

Amends Sections 11-703(b) and 11-904(b) of the D.C. Code to eliminate the cap on judicial salaries in the District of Columbia and to make those salaries commensurate with those of federal judges.

SECTION 17

Effective date

Provides the effective date of the amendments contained in this bill to be the date of enactment.

DISCUSSION

The amendment in the nature of a substitute that was adopted by the Government Affairs Committee omits several provisons included in the bill as passed by the House.

Section 2 of H.R. 3578 as passed by the House would require the United States Attorney for the District of Columbia to compile and make available an annual report on certain prosecution statistics. This section was deleted in the substitute amendment because it was felt that this requirement would duplicate current statistics published by the Office and would unnecessarily consume valuable and finite resources of the Office.

Section 3 of H.R. 3578 as passed by the House permamently authorizes the use of hearing commissioners in the District of Columbia Superior Court and is similar to Section 2 of the amendment ordered reported by the Governmental Affairs Committee. This section has been the subject of much review and work by numerous interested parties, and the provisions contained in the Senate version represent the results of a series of discussions.

An overriding concern with maintaining the hearing commissioners as an arm of the judges of the court and in no way creating a second tier of justice at Superior Court has driven the committee in constructing these provisions. In that regard, it was felt that the appointment on discipline of a hearing commissioner should be a function of the chief judge of the Superior Court and the Board of Judges. A hearing commissioner would serve for a set term, and would be subject to removal only for certain delineated causes, and only after the opportunity to be heard on the matter is presented to the hearing commissioner. The specific duties of a hearing commissioner are spelled out in the section, and certain provisions of

current law requiring the consent of the parties to putting a matter before a hearing commissioner have been eliminated in order to provide the maximum flexibility to the system, which, again, is intended to be an extension of the court and in no way a second tier of justice within the court. As with current law, a determination made by a hearing commissioner may be reviewed by a judge of the Superior Court sua sponte and must be reviewed upon a motion of one of the parties to the matter before the commissioner. The provisions make clear that a hearing commissioner's order or judgment is final in certain situations. The section would bring the District law into compliance with the requirements of the Child Support Enforcement Amendments of 1984. Finally, the Senate amendment requires the chief judge of the Superior Court, in consultation with representatives of the D.C. Bar and other interested parties (which the Committee intends to be heavily weighted toward those with actual experience in the Superior Court and before hearing commissioners at the Court), shall conduct a study of the sytem and report its findings and recommendations to the appropriate committees of Congress, including the House District Committee and the Senate Subcommittee or Governmental Efficiency and the District of Columbia, within one year of the adoption of this measure.

Section 6 of H.R. 3578 as passed by the House would amend section 1-2703 of the D.C. Code to eliminate the Chief Judge of the United States Court of Appeals for the District of Columbia as a member of the panel composed to appoint the Board of Trustees for the Distict of Columbia Public Defender Service (PDS), and would designate the Chief Judge of the District of Columbia Court of Appeals as the presiding officer of that panel. The Committee has eliminated this section at the urging of the PDS Board of Trustees which communicated its position that the service of the chief judge of the federal appeals court be allowed to continue. It is the feeling of the Board that the federal presence on the panel exposes the PDS to a broader range of members of the local bar and provides valuable insights into the mission of the agency. In addition, it is the strong concern of the Board that "no legislative action should be taken which might serve to diminish the independence of this agency," and that this section might be so interpreted.

Section 16 of H.R. 3578 as passed by the House is similar to Section 14 of the bill as ordered reported by the Governmental Affairs Committee. This section will allow a judge to request a recommendation from the D.C. Commission on Judicial Disabilities and Tenure to be appointed as a senior judge. The Senate amendment limits the time during which this request can be made to one year following retirement, at the urging of the Commission. This was done because the Commission has expressed a concern about its ability to make such determinations more than one year after a judge has left the bench.

Evaluation of Regulatory Impact

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the

regulatory impact which would be incurred in carrying out the bill."

H.R. 3578 will not have any additional regulatory impact. It does not authorize any additional regulation of activity within the private sector, impose any new recordkeeping or reporting requirements on any segment of the public, or abolish any existing regulations.

Estimated Cost of the Legislation

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the cost implications of H.R. 3578. The following is CBO's estimate of the potential costs of the legislation:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 31, 1986.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 3592, the District of Columbia Judicial Efficiency and Improvement Act of 1985, as ordered reported by the Senate Committee on Governmental Affairs, June 25, 1986. We estimate that enactment of this bill would result in no significant cost to the federal government and in an annual savings to the District of Columbia of approximately $200,000.

H.R. 3592 would provide permanent authority for hearings commissioners in the District of Columbia Superior Court, modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and make other administrative changes in the District of Columbia judicial system. The bill would also amend the District of Columbia Code to require that District judges receive 100 percent, rather than the current 90 percent, of the salaries of federal judges.

According to the Executive Office of the District of Columbia Courts, in 1985 the District of Columbia spent $307,000 for hearings commissioners, whose authority would expire this year without Congressional action. If the commissioners were not reauthorized, the District would require six additional judgeships at a total cost of approximately $900,000 annually to do the work performed by hearings commissioners in the past. Thus, reauthorization of the commissioners would result in a net savings to the District of Columbia of approximately $600,000 annually. The provision concerning compensation of judges, however, would result in additional costs of approximately $400,000 annually. CBO estimates that other provisions of H.R. 3592 would result in no significant cost to the District or to the federal government.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

COMMITTEE ACTION

On June 25, 1986, a quorum being present, the Committee on Governmental Affairs agreed to report favorably H.R. 3578, with an amendment in the nature of a substitute, to the Senate. No opposition to the bill was registered by any member.

CHANGES IN EXISTING LAW

Rule XXVI of the Standing Rules of the Senate requires that changes in existing law made by the bill, as reported, be detailed in the Committee Report accompanying the bill. In compliance with that rule, changes are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 11, DISTRICT OF COLUMBIA CODE

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CHAPTER 7. DISTRICT OF COLUMBIA COURT OF APPEALS

SUBCHAPTER I. CONTINUATION AND ORGANIZATION

Sec.
11-701. Continuation of court; court of record; seal.

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§ 11-703. Judges; service; compensation.

(a) The chief judge and the judges of the court shall serve in accordance with chapter 15 of this title.

(b) Judges of the court shall be compensated at [90 per centum of] the rate prescribed by law for judges of the United States courts of appeals. The chief judge, during his service in that position, shall receive an additional $500 per annum.

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SUBCHAPTER II. JURISDICTION

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11-723. Certification of questions of law.

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Subchapter II. Jurisdiction

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§ Sec. 11-723. Certification of Questions of Law.

(a) The District of Columbia Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or the highest appellate court of any State, if there are involved in any proceeding before any such certifying court questions of law of the District of Columbia which may be determinative of the cause pending in such

certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the District of Columbia Court of Appeals.

(b) This section may be invoked by an order of any of the courts referred to in subsection (a) upon the court's motion or upon motion of any party to the cause.

(c) A certification order shall set forth (1) the question of law to be answered; and (2) a statement of all facts relevant to the questions certified and the nature of the controversy in which the questions arose.

(d) A certification order shall be prepared by the certifying court and forwarded to the District of Columbia Court of Appeals. The District of Columbia Court of Appeals may require the original or copies of all or such portion of the record before the certifying court as are considered necessary to a determination of the questions certified to it.

(e) Fees and costs shall be the same as in appeals docketed before the District of Columbia Court of Appeals and shall be equally divided between the parties unless precluded by statute or by order of the certifying court.

(f) The District of Columbia Court of Appeals may prescribe the rules of procedure concerning the answering and certification of questions of law under this section.

(g) The written opinion of the District of Columbia Court of Appeals stating the law governing any questions certified under subsection (a) shall be sent by the clerk to the certifying court and to the parties.

(h)(1) The District of Columbia, Court of Appeals, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any State under the conditions described in subsection (a).

(2) The procedures for certification from the District of Columbia to a State shall be those provided in the laws of that State.

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CHAPTER 9. SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Subchapter 1. Continuation and Organization

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§ 11–904. Judges; service; compensation.

(a) The chief judge and the judges of the Superior Court shall serve as provided in chapter 15 of this title.

(b) Judges of the Superior Court shall be compensated at [90 per centum of] the rate prescribed by law for judges of United States district courts. The chief judge, during his service in that position, shall receive an additional $500 per annum.

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CHAPTER 15. JUDGES OF THE DISTRICT OF COLUMBIA COURTS

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Subchapter I. Appointment; Qualifications; Service of Judges

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§ 11–1504. Services of retired judges.

(a) (1) A judge, retired for reasons other than disability, who has been favorable recommended and appointed as a senior judge, in accordance with subsection (b), may perform such judicial duties as such senior judge is assigned and willing and able to undertake. A senior judge shall be subject to reappointment every two years in accordance with subsection (b). Except as provided under this section, retired judges may not perform judicial duties in District of Columbia courts.

[(2) Within 180 days of the date of retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the "Commission") to be appointed as a senior judge in accordance with this section.

[(3) Retired judges actively serving on the date of enactment of the District of Columbia Retired Judge Service Act and willing to continue to perform judicial duties shall request recommendation from the Commission to be appointed as senior judges within 180 days of the date of enactment of such Act in accordance with this section.]

(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the "Commission") to be appointed as a senior judge in accordance with this section.

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Subchapter II. The District of Columbia Commission on Judicial Disabilities and Tenure

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§ 11–1528. Privilege; confidentiality.

[(a) The filing of papers with and the giving of testimony before the Commission shall be privileged. Unless otherwise authorized by the judge whose conduct or health is the subject of the proceedings under this subchapter, the hearings before the Commission, the record thereof, and all papers filed in connection with such hearings shall be confidential. But on prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection therewith shall be disclosed to the extent required for the prosecution or review.]

(a)(1) Subject to paragraph (2), the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record

thereof, and materials and papers filed in connection with such hearings shall be confidential.

(2)(A) The judge whose conduct or health is the subject of any proceedings under this subchapter may disclose or authorize the disclosure of any information under paragraph (1).

(B) With respect to a prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection with such hearing shall be disclosed to the extent required for such prosecution or review.

(C) Upon request, the Commission shall disclose, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission any information under paragraph (1) concerning any judge being considered by such nomination commission for elevation to the District of Columbia Court of Appeals or for chief judge as a District of Columbia court.

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CHAPTER 17. ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS

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Subchapter I. Court Administration

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§ 11–1703. Executive Officer of the District of Columbia Courts; Appointment; Compensation.

(a) There shall be an Executive Officer of the District of Columbia courts (hereafter in this chapter referred to as the "Executive Officer"). He shall be responsible for the administration of the District of Columbia court system subject to the supervision of the Joint Committee and the chief judges of the respective courts as provided in this chapter. He shall be subject to the supervision of the Joint Committee regarding administrative matters that are enumerated in section 11–1701(b). He shall be subject to the supervision of the chief judges in their respective courts: (1) regarding all administrative matters other than those within the responsibility enumerated in section 11–1701(b), and (2) regarding the implementation in the respective courts of the matters enumerated in section 11–1701(b), consistent with the general policies and directives of the Joint Committee.

[(b) The Executive Officer shall be selected by, and subject to removal by, the Joint Committee with the concurrence of the respective chief judges. He shall be selected from a list of at least three qualified persons, submitted by the Director of the Administrative Office of the United States Courts.]

(b) The Executive Officer shall be appointed, and subject to removal, by the Joint Committee on Judicial Administration with the approval of the chief judges of the District of Columbia courts. In making such appointment the Joint Committee shall consider experience and special training in administrative and executive positions and familiarity with court procedures.

(c) The Executive Officer shall be a bona fide resident of the District of Columbia or become a resident not more than 90 days after the date of appointment except that the Executive Officer in office at the effective date of this Act shall not be required to be or to become a resident of the District of Columbia.

[(c)] *(d)* The Executive Officer shall receive the same compensation, including retirement benefits, as an associate judge of the Superior Couirt.

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§ 11-1724. Auditor-Master.

There shall be an Auditor-Master of the Superior Court who shall [(1) audit and state fiduciary accounts, (2)] *(1)* execute orders of reference referred by the Superior Court and perform duties in connection with the execution of such orders in accordance with Rule 53 of the Federal Rules of Civil Procedure or other applicable rule, and [(3)] *(2)* perform such other functions as may be assigned by the Superior Court. The Auditor-Master shall give bond faithfully to discharge the duties of his office. The bond shall have two or more sureties to be approved by the chief judge of the Superior Court, and shall be in an amount prescribed by him.

Subchapter II. Court Personnel

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[§ 11-1732. Hearing commissioners.

[(a) The chief judge of the superior court may appoint and may remove hearing commissioners who shall serve in the superior court and shall, in addition to the performance of the duties enumerated in subsection (c) of this section, perform such other duties as are not inconsistent with the Constitution and laws of the United States and of the District of Columbia, or as may be assigned by rule of the superior court.

[(b) No individual may be appointed or serve as a hearing commissioner under this section unless he or she has been a member of the bar of the District of Columbia for at least three years.

[(c) A hearing commissioner, when specifically designated by the chief judge of the superior court, may perform the following functions:

[(1) administer oaths and affirmations and take acknowledgements.

[(2) with the consent of the parties, determine conditions of release and pretrial detention pursuant to the provisions of title 23 of the District of Columbia Code (relating to criminal procedures).

[(3) with the consent of the parties, conduct preliminary examinations in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it.

[(4) with the consent of the parties involved make findings and recommendations in uncontested proceedings, and in contested hearings in the civil, criminal and family divisions of the superior court. A rehearing of the case, or a review of the

hearing commissioner's findings and recommendations, may be made by a judge of the appropriate division sua sponte. The findings and recommendations of the hearing commissioner shall when approved by a judge of the appropriate division constitute a final order of the superior court.

[(5) with the consent of the respondent make findings and recommendations in any nonjury traffic infraction matters in the superior court. A rehearing of the case, or a review of the hearing commissioner's findings and recommendations, may be made by a judge of the superior court sua sponte. The findings and recommendations of the hearing commissioner when approved by a judge of the superior court shall constitute a final order of the superior court.

[(d) The provisions contained in this section shall remain in effect until September 30, 1985.]

§ 11–1732. Hearing commissioners.

(a) With the approval of a majority of the judges of the Superior Court of the District of Columbia in active service and subject to standards and procedures established by the rules of the Superior Court, the chief judge of the Superior Court may appoint Hearing Commissioners, who shall serve in the Superior Court and perform the duties enumerated in subsection (j) of this section and such other functions incidental to these duties as are consistent with the rules of the Superior Court and the Constitution and laws of the United States and of the District of Columbia.

(b) Hearing commissioners shall be selected pursuant to standards and procedures adopted by the Board of Judges. Such procedures shall contain provisions for public notice of all vacancies in hearing commissioner positions and for the establishment by the Court of an advisory merit selection panel, composed of lawyer and nonlawyer residents of the District of Columbia who are not employees of the District of Columbia Courts, to assist the Board of Judges in identifying and recommending persons who are best qualified to fill such positions.

(c) No individual shall be appointed as a hearing commissioner unless that individual—

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the appointment or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government; and

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment, and retains such residency during service as a hearing commissioner, except that Hearing Commissioners appointed prior to the effective date of this section shall not be required to be residents of the District to be eligible to be appointed to one of the intitial terms under this section or to be reappointed.

(d) Hearing commissioners shall be appointed for terms of four years and may be reappointed for terms of four years. Those individ-

uals serving as hearing commissioners on the effective date of this Act shall be automatically appointed for a four year term.

(e) Upon the expiration of a hearing commissioner's term, the hearing commissioner may continue to perform the duties of office until a successor is appointed, or for 90 days after the date of the expiration of the hearing commissioner's term, whichever is earlier.

(f) No individual may serve as a hearing commissioner under this section after having attained the age of seventy-four.

(g) The Board of Judges may suspend, involuntarily retire, or remove a hearing commissioner, during the term for which the hearing commissioner is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability. Suspension, involuntary retirement, or removal requires the concurrence of a majority of the judges in active service. Before any order of suspension, involuntary retirement, or removal shall be entered, a full specification of the charges and the opportunity to be heard shall be furnished to the hearing commissioner pursuant to procedures established by rules of the Superior Court.

(h) If the Board of Judges determines that a hearing commissioner position is not needed, the Board of Judges may terminate the position.

(i)(1) Hearing commissioners may not engage in the practice of law, or in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as officers of the court.

(2) Hearing commissioners shall abide by the Canons of Judicial Ethics.

(j) A hearing commissioner, when specifically designated by the chief judge of the Superior Court, and subject to the rules of the Superior Court and the right of review under subsection (k), may perform the following functions:

(1) Administer oaths and affirmations and take acknowledgements;

(2) Determine conditions of release pursuant to the provisions of title 23 of the District of Columbia Code (relating to criminal procedure);

(3) Conduct preliminary examinations and initial probation revocation hearings in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it;

(4)(A) In any case brought under sections 11–1101 (1), (3), (10), or (11) of the District of Columbia Code involving the establishment or enforcement of child support, or in any case seeking to modify an existing child support order, where a hearing commissioner in the Family Division of the Superior Court finds that there is an existing duty of support, the hearing commissioner shall conduct a hearing on support, make findings, and enter judgment as provided by law, and in accordance with guidelines established by rule of the Superior Court, which judgment shall constitute a final order of the Superior Court.

(B) If in a case under subparagraph (A), the hearing commissioner finds that a duty of support exists and makes a finding that the case involves complex issues requiring judicial resolution, the hearing commissioner shall establish a temporary sup-

port obligation and refer unresolved issues to a judge of the Superior Court.

(C) In cases under subparagraphs (A) and (B) in which the hearing commissioner finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceeding under any applicable statute or court rule, if that individual fails to appear or otherwise respond, the hearing commissioner shall enter a default order, which shall constitute a final order of the Superior Court;

(5) Subject to the rules of the Superior Court and with the consent of the parties involved, make findings and enter final orders or judgments in other uncontested or contested proceedings, in the Civil, Criminal, and Family Divisions of the Superior Court, excluding jury trials and trials of felony cases.

(k) With respect to proceedings and hearings under paragraphs (2), (3), (4), and (5) of subsection (j), a review of the hearing commissioner's order or judgment, in whole or in part, may be made by a judge of the appropriate division sua sponte and must be made upon a motion of one of the parties made pursuant to procedures established by rules of the Superior Court. The reviewing judge shall conduct such proceedings as required by the rules of the Superior Court. An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Superior Court has reviewed the order or judgment.

(l) The Superior Court shall ensure that all hearing commissioners receive training to enable them to fulfill their responsibilities.

(m)(1) The chief judge of the Superior Court, in consultation with the District of Columbia Bar and other interested parties, shall within one year of the effective date of this section, make a careful study of conditions in the Superior Court to determine—

(A) the number of appointments required to provide for the effective administration of justice;

(B) the divisions in which hearing commissioners shall serve;

(C) the appropriate functions of hearing commissioners; and

(D) the compensation of, and other personnel matters pertaining to, hearing commissioners.

Upon completion of the study, the chief judge shall report the findings of such study to the appropriate committees of the Congress.

(2) After the study required by paragraph (1), the chief judge shall, from time to time, make such studies as the Board of Judges shall deem expedient, giving consideration to suggestions of the District of Columbia Bar and other interested parties.

(n) With the concurrence of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court may, promulgate rules, not inconsistent with the terms of this section, which are necessary for the fair and effective utilization of hearing commissioners, in the Superior Court,

(o) For purposes of this section, the term "Board of Judges" means the judges of the Superior Court of the District of Columbia. Any action by the Board of Judges shall require a majority vote of the sitting judges.

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CHAPTER 21. REGISTER OF WILLS

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§ 11-2104. Powers and duties; restrictions; penalties.

(a) The Register of Wills may—

(1) receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final approval of the court;

(2) take the probate of claims against the estates of deceased persons that are properly brought before him, and approve or reject claims not exceeding $300; [and]

(3) take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval of the court [.]; *and*

(4) audit and state fiduciary accounts.

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TITLE IV—THE DISTRICT CHARTER

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PART C—THE JUDICIARY

JUDICIAL POWERS

SEC. 431. (a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating Commission established by section 434 from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until his successor is designated, except that his term as chief judge shall not extend beyond the chief judge's term as a judge of a District of Columbia court. He shall be eligible for redesignation as chief judge.

(c) A judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 shall be appointed for a term of fifteen years subject to mandatory retirement at age [seventy] *seventy-four* or removal, suspension, or involuntary retirement pursuant to section 432 and upon completion of such term, such judge shall continue to serve until reappointed or his successor is appointed and qualifies.

A judge may be reappointed as provided in subsection (c) of section 433.

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NOMINATION AND APPOINTMENT OF JUDGES

SEC. 433. (a) Except as provided in section 434d(1), the President shall nominate, from the list of persons recommended to him by the District of Columbia Judicial Nomination Commission established under section 434, and, by and with the advice and consent of the Senate appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless he—

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding his nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to his nomination, and shall retain such residency as long as he serves as such judge, except judges appointed prior to the effective date of this part who retain residency as required by section 1501(a) of title 11 of the District of Columbia Code shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to his nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than [three] *six* months prior to the expiration of his term of office, any judge of the District Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of his term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than [thirty] *sixty* days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be [exceptionally well qualified or] well qualified for appointment to another term then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the

Senate for advice and consent the renomination of the declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the renomination for the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION

SEC. 434. (a) * * *

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(c)(1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members. *Meetings of the Commission may be closed to the public. Section 742 of this Act shall not apply to meetings of the Commission.*

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(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Commission properly to perform its function. **[**Information so furnished shall be treated by the Commission as privileged and confidential.**]** *Information, records, and othe materials furnished to or developed by the Commission in the performance of its duties under this section shall be privileged and confidentiai. Section 552 of title 5, United States Code, (known as the Freedom of Information Act) shall not apply to any such materials.*

(d)(1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within **[**thirty**]** *sixty* days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, to a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such a judge's term of office, the Commission's list of nominees shall be submitted to the President not less than **[**thirty**]** *sixty* days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to him under this section within sixty days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons fill the vacancy for which such list was originally submitted to the President.

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(4) Upon submission to the President, the name of any individual recommended under this subsection shall be made public by the Judiciary Nomination Commission.

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ETHICS IN GOVERNMENT ACT OF 1978

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TITLE III—JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

PERSONS REQUIRED TO FILE

SEC. 301. (a) Within thirty days of assuming the position of a judicial employee, an individual shall file a report containing the information described in section 302(b).

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(h) The provisions of this Act shall not apply to any judicial officer or employee of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals or any other employee of the District of Columbia court system.

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DEFINITIONS

SEC. 308. For the purposes of this title, the term——

(1) * * *

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(9) "judicial officer" means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals; United States district courts, including the district courts in the Canal Zone, Guam, and the Virgin Islands; Court of Claims; Court Appeals for the Federal Circuit; Court of International Trade; Tax Court; United States Court of Military Appeals; [Courts of the District of Columbia] and any court created by the Act of Congress, the judges of which are entitled to hold office during good behavior; and

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